

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GREGORY FRANKLIN,) Civil No.07CV0438-BTM(LSP)
Plaintiff,)
v.)
L.E. SCRIBNER, et al.,) **REPORT AND RECOMMENDATION**
Defendants.) **RE: PLAINTIFF'S MOTION FOR**
) **DEFAULT JUDGMENT** (Doc. 13)

Plaintiff has moved the Court to enter default judgment as to Defendants L.E. Scribner, T. Ochoa, R. Madden, D.W. Bell, E. Trujillo, G. Haley, R. Nelson, P. Zill, and R. Bass. Pursuant to 28 U.S.C. §636(b)(1)(A) and CivLR 72.3.f., the Hon. Barry T. Moskowitz has referred Plaintiff's motion to this Court for report and recommendation. After due consideration and as set forth below, the Court finds Plaintiff is not entitled to the relief he requests and recommends the motion be DENIED without prejudice.

On May 21, 2007, District Judge Moskowitz granted Plaintiff's motion to proceed *in forma pauperis* and referred service of Plaintiff's Complaint and summons to the United States Marshall. By way of his motion, Plaintiff claims service was executed on each of the above identified Defendants on June 15, 2007.

On July 20, 2007, executed Waivers of Personal Service of Summons were filed by the U.S. Marshall for seven of the defendants that are the subject of Plaintiff's motion, specifically Defendants

1 G. Haley, L.E. Scribner, E. Trujillo, T. Ochoa, D.W. Bell, R. Madden, and R. Bass. (Doc. 14 – 20).
2 Pursuant to Fed. R. Civ. P. Rule 4(d)(3), these defendants are not required to serve an answer or
3 responsive pleading to Plaintiff's Complaint until sixty days after June 15, 2007, the date on which the
4 U.S. Marshall sent the requests for waiver of service to these defendants. Therefore, Plaintiff's motion
5 is premature as to these defendants.

6 Service of Defendants R. Nelson and P. Zill can not be verified by any means other than
7 Plaintiff's assertion. Pursuant to CivLR 5.2, a valid and complete proof of service shall be filed with the
8 Court promptly and before any action is to be taken thereon by the Court or the parties. No such proof
9 of service has been filed by either Plaintiff or the U.S. Marshall for Defendant R. Nelson or Defendant
10 P. Zill. Accordingly, there is presently no basis for Plaintiff's motion as to these two defendants.

11 ***CONCLUSION AND RECOMMENDATION***

12 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that the Court issue an Order
13 DENYING Plaintiff's motion.

14 **IT IS ORDERED** that no later than August 3, 2007, any party to this action may file written
15 objections with the Court and serve a copy on all parties that have appeared in the case. The document
16 should be captioned "Objections to Report and Recommendation." Plaintiff is advised that failure to file
17 objections with the specified time may waive the right to raise those objections on appeal of the Court's
18 order. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156
19 (9th Cir. 1991).

20 DATED: July 23, 2007

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Hon. Leo S. Papas
U.S. Magistrate Judge